

ESTTA Tracking number: **ESTTA227778**

Filing date: **08/01/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	LABORATOIRES EXPANSCIENCE
Granted to Date of previous extension	08/09/2008
Address	10, avenue de l'Arche F-92400 COURBEVOIE, FRANCE
Attorney information	William C. Wright Epstein Drangel Bazerman & James, LLP 60 East 42nd Street, Suite 820 New York, NY 10165 UNITED STATES mail@ipcounselors.com

Applicant Information

Application No	77336431	Publication date	06/10/2008
Opposition Filing Date	08/01/2008	Opposition Period Ends	08/09/2008
International Registration No.	NONE	International Registration Date	NONE
Applicant	michael d'souza mufti 789 fulham road london , sw65hd, UNITED KINGDOM		

Goods/Services Affected by Opposition

Class 003. Opposed goods and services in the class: Cosmetics
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Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	no bona fide intent

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	3019551	Application Date	06/06/2002
Registration Date	11/29/2005	Foreign Priority Date	NONE

Word Mark	MUSTI
Design Mark	
Description of Mark	NONE
Goods/Services	<p>Class 003. First use:</p> <p>Sun tan lotion and oil; sun block and sun screen preparations; sun care lotions; sun creams; after-sun lotions; antiperspirants; perfumery namely perfume, toilet water, perfumed powder-cosmetic products and preparations, namely creams for the skin, hands, face and body; lotions for the skin, hands, face and body; pre-moistened cosmetic towelettes; soaps; medicated soaps; dermatological soaps; disinfectant soaps; toilet milk; almond milk for cosmetic use; body oil, almond oil for massage, sun lotion, sun milk, sun cream; astringents for cosmetic use, bath gel, bath pearls; cotton wool sticks for cosmetic use; essential oils for personal use; cosmetic, hair lotions, dentifrices; toilet water; water for the skin; cleaning solutions for the skin; shampoos; make-up remover; toilet soap; non-medicated scalp treatment cream; non medicated skin care products for babies namely, shampoos, sun screen for babies, sun screen for adults, hydrating cream and soaps for face and body; baby wipes; washing solutions for hair and body; moisturizing soaps, personal soaps-cream; disinfectant soaps foaming bath for babies; creams and milk for body, creams and milk for babies' bottom; cotton sticks for cosmetic purposes; beauty cream, cream for toilet use; vitamin-enriched non-medicated diaper rash ointments and lotions, vitamin-enriched non-medicated diaper rash ointments and lotions; creams and milk for sun protection; dermatological cleaning gel and bar without soap; hand creams, toilet powder</p> <p>Class 005. First use:</p> <p>Mosquito repellent; fungicidal creams for medical use; pharmaceutical preparations for dermatological use; chemical products for pharmaceutical use, namely, pharmaceutical preparations for the treatment of moderate or intense pains, osteo-arthritis, gum diseases, disorders regarding venous circulation, delicacy of small blood vessels, eye troubles caused by circulatory disorders, pains of the digestive tract, of the biliary tracts, intestine discomfort, vascular system, metabolism, bone decalcifications, calcium deficiency, acne, mouth affections, the mouth after surgical operations, traumatic or inflammatory states of the mouth, gingival mucous membrane and digestive apparatus; pharmaceutical skin care preparations for the treatment of acne and problems of the skin for pregnant women, namely medicated cleansing lotions and water, skin cleaning preparations for medical use, namely antiseptics, antibacterial pharmaceuticals; pharmaceutical preparations, namely hygienic preparations for the treatment of mouth, dental, or gum diseases; medical plasters; disinfectants for medical or hygienic use, not including soaps; fungicides for domestic use; pharmaceutical sunstroke preparations; pharmaceutical preparations for the treatment of irritations on the skin of babies and dermatological preparations for babies for the treatment of diseases of the skin of babies; pharmaceutical preparations used in the treatment of dental and gum diseases; pharmaceutical preparations for use in the treatment of rheumatoid arthritis; antiseptic; bactericide; dietary drink mix for use as a meal replacement; food for medically restricted diets; food for babies; wound, burn, and surgical dressings; material for stopping teeth; disinfectant for medical instruments; all purpose disinfecting preparations; fungicides for medical use; glycerin for medical use; pre-moistened towelettes of pharmaceutical lotions against dandruff; pharmaceutical cleaning creams and gels for the skin; antibacterial alcohol skin sanitizer gel; antibacterial hand wash; pharmaceutical preparations containing insect repellent; medicinal creams for skin care, medicinal lotions and soaps for skin care; pharmaceutical preparations for the treatment of dermatologic diseases and conditions; pharmaceutical preparations for the treatment of the scalp; chemical products and pharmaceutical preparations for the diagnosis of pregnancy, namely pregnancy test kits for home use; vitamin-enriched</p>

	<p>medicated diaper rash ointments and lotions; cotton sticks for medical purposes</p> <p>Class 010. First use:</p> <p>Plastic casts for orthopaedic purposes</p> <p>Class 018. First use:</p> <p>Trunks and traveling bags; leather and imitation leather; goods made of leather and imitation leather, namely, chest, trunks, luggage and coffers; school bags, suit cases, briefcases, purses, wallets, business card and name card cases, key cases, vanity cases sold empty, carry-on bags and carry on bags made of terry cloth, baby backpacks, baby carriers to be worn on the body, beach bags, roll bags, traveling bags and cases, rucksack; umbrellas, parasols and walking sticks</p> <p>Class 025. First use:</p> <p>Baby and infant's wear, namely, diaper covers made of textile, overalls, pants, smocks, tights, pants, trousers, pajamas, shorts, shirts, t-shirts, sweatshirts, sport shirts, sweaters, snowsuits, exercise suits, warm-up suits, jackets, coats, dresses, skirts, robes, swimwear, leotards, tights, underwear, socks, belts, shorts, gloves, mittens, footwear, slippers, shoes, sandals, booties, gloves, belts, scarves, caps, hats, headbands and headwear; baby bibs not of paper</p> <p>Class 028. First use:</p> <p>Baby multiple activity toys; bath and bathtub toys; children's activity toys and games; crib toys; infant toys; play mats containing infant toys; rattles plush toys; stuffed toys; toys designed to be attached to car seats, strollers, cribs and high chairs; board games; card games; teddy bears; dolls; puppets; decorations for Christmas trees</p>
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U.S. Registration No.	2274176	Application Date	06/12/1998
Registration Date	08/31/1999	Foreign Priority Date	NONE
Word Mark	MUSTI		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 003. First use:</p> <p>Cleansing materials and non-medicated skin care products and preparations for babies, namely pre-moistened cosmetic towelettes and wipes, soaps, scented soaps, skin cream, facial and body hydrating cream, facial and body lotion and baby oil</p>		

Attachments	75501218#TMSN.gif (1 page)(bytes) DOC080108-004.pdf (7 pages)(155157 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Overnight Courier on this date.

Signature	/William C. Wright/
Name	William C. Wright
Date	08/01/2008

In the Matter of the Trademark Application for MUFTI and Design,
Ser. No. 77/336,431, in the name of Michael D'Souza Ltd.

Applicant.

Opp. No.

In the Matter of Application Ser. No. 77/336,431, published in the Official Gazette on May 21, 2008, LABORATOIRES EXPANSCIENCE, a joint-stock company, organized and existing under the laws of France, having a principal place of business at 10 Avenue De L'arche, 92400 COURBEVOIE, France (hereinafter "Opposer"), believes that it is or will be damaged by registration of the trademark MUFTI and Design, as reflected in application Ser. No. 77/336,431, and hereby opposes same.

As grounds therefor, it is alleged that:

1. On November 26, 2007, Michael D'Souza Ltd., (hereinafter "Applicant") filed with the United States Patent and Trademark Office (hereinafter "U.S. PTO") an application to register the trademark MUFTI and Design, Ser. No. 77/336,431, for "Cosmetics; Bands of leather; Briefcases; Hat boxes of leather; Imitation leather; Imitation leather key chains; Imitation leather sold in bulk; Key-cases of leather and skins; Leather; Leather and imitation leather; Leather and imitation leather bags; Leather bags for merchandise packaging; Leather bags, suitcases and wallets; Leather boxes for storing greeting cards; Leather briefcases; Leather cases; Leather cases for keys; Leather for furniture; Leather for harnesses; Leather for shoes; Leather handbags; Leather key cases; Leather key chains; Leather pouches; Leather purses; Leather shopping bags; Leather shoulder belts; Leather sold in bulk; Leather straps; Leather thongs; Leather thread; Pet accessories, namely, specially designed canvas, vinyl or leather bags attached to animal leashes for holding small items such as keys, credit cards, money or disposable bags for disposing of pet waste; Pet accessories, namely, canvas, vinyl and leather pouches for holding disposable bags to place pet waste in; Pouches of leather; Saddlery of leather; Tanned leather; Thongs; Travelling cases of leather; Furniture; Covered rubber yarn fabrics; Curtain loops of textile material; Curtains made of textile fabrics; Curtains of textile or plastic; Fabrics for textile use; Face towels; Felt and non-woven textile fabrics; Gift wrap of textile; Hand towels of textile; Hand-towels made of textile fabrics; Handkerchiefs of textile; Handkerchiefs of textiles; Non-woven textile fabrics; Place mats of textile material; Printed

textile labels; Quilts of textile; Serviettes of textile; Table linen of textile; Table napkins of textile; Tablecloths of textiles; Tapestries of textile; Textile fabric of animal skins imitations; Textile fabrics for home and commercial interiors; Textile fabrics for lingerie; Textile fabrics for the manufacture of clothing; Textile goods, namely, a synthetic sheet with fragrance for the purpose of inserting into pillow slip and under fitted sheet to emit fragrance; Textile handkerchiefs; Textile hang tags; Textile labels; Textile napkins; Textile napkins for removing make-up; Textile place mats; Textile printers' blankets; Textile serviettes; Textile signage panels; Textile substitute materials made from synthetic materials; Textile tablecloths; Textile tissues for removing make-up; Textile used as lining for clothing; Textile wall hangings; Textile wall hangings, namely, cloth posters; Textiles for dye-sublimation printing ; Towels; Wall hangings of textile; Wavy fiber textiles; Swaddling clothes; Ties; Tops; Triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Underarm clothing shields; Wraps; Clothing, namely, wrap-arounds; Corsets; Dusters; Foulards; Hoods; Infant and toddler one piece clothing; Infant cloth diapers; Jerseys; Leather belts; Mantles; Mufflers; Non-disposable cloth training pants; Paper hats for use as clothing items; Parts of clothing, namely, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; Perspiration absorbent underwear clothing; Shifts; Short sets; Shoulder wraps; Belts; Bibs not of cloth or paper; Caps; Children's and infants' cloth bibs; Children's cloth eating bibs; Cloth bibs; Cloth bibs for adult diners; Cloth bibs for use by senior citizens or

physically- or mentally-challenged persons; Cloth diapers; Clothing for wear in judo practices; Clothing for wear in wrestling games; Clothing, namely, arm warmers; Clothing, namely, folk costumes; Clothing, namely, hand-warmers; Clothing, namely, knee warmers; Clothing, namely, neck tubes; Clothing, namely, thobes”, based on a corresponding United Kingdom registration.

2. Upon information and belief, at the time of filing said application, Applicant did not have a bona fide intention to use the alleged mark MUFTI and Design on or in connection with all of the goods set forth therein.
3. Opposer has sold, and offered for sale, goods bearing the trademarks MUSTI and/or MUSTI and Design in a trading area of broad geographical scope, including the United States and numerous countries throughout the world.
4. In addition to Opposer’s common law rights, Opposer owns the United States federal trademark registrations of MUSTI, Reg. No. 3,019,551, in International Classes 3, 5, 10, 18, 25, and 28, dated November 29, 2005, along with the incontestable trademark registration of MUSTI and Design, Reg. No. 2,274,176, in Class 3, dated August 31, 1999. Attached to this Notice of Opposition are print-outs from the “TARR” database, showing status and ownership of the aforementioned trademark registrations.
5. There is no issue of priority as the filing date of the application to register the trademark MUFTI and Design, Ser. No. 77/336,431, is subsequent to Opposer’s filing dates and/or registration dates of Opposer’s trademark applications for MUSTI and MUSTI and Design, and/or to the dates of first use in commerce of Opposer’s aforementioned marks.

6. Opposer's trademarks MUSTI and MUSTI and Design possess a high degree of inherent distinctiveness and represent an extremely valuable asset and symbol of goodwill of Opposer's business by identifying goods which have their source of origin exclusively with Opposer, and by distinguishing such goods from those of others.
7. Applicant's alleged trademark MUFTI and Design is so similar to Opposer's pleaded trademarks MUSTI and MUSTI and Design in sound, appearance, meaning, and/or commercial impression as to be likely to cause confusion, mistake, or deception as to the source of origin or sponsorship of the goods for which the marks are used or are intended to be used.
8. The respective goods are the same or similar and travel or will travel through the same channels of trade for sale to or use by the same class of purchasers.
9. Applicant's alleged trademark MUFTI and Design is confusingly similar with Opposer's trademarks MUSTI and MUSTI and Design and is likely to cause confusion, to cause mistake and to deceive potential purchasers as to the source of Applicant's goods, with consequent injury to Opposer, the public, and the trade, and/or to cause the mistaken belief that Applicant's goods originate with, are sponsored by, and/or are otherwise affiliated with Opposer.
10. Applicant's alleged trademark MUFTI and Design is calculated or likely to cause irreparable loss, injury and damage to Opposer's business and to the extensive goodwill as symbolized by its aforementioned trademarks.
11. Applicant's alleged trademark MUFTI and Design is a colorable imitation or misappropriation of Opposer's pleaded trademarks, and will enable Applicant

to reap where it has not sown by trading on the goodwill of Opposer's business as symbolized by its trademarks MUSTI and MUSTI and Design.

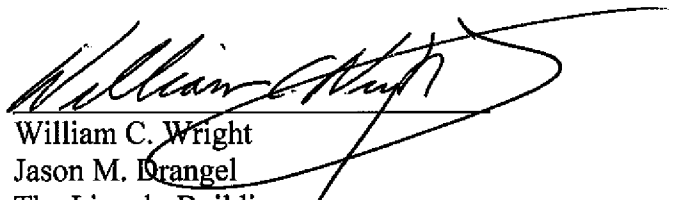
WHEREFORE, Opposer requests that this opposition against the trademark application for MUFTI and Design, Ser. No.77/336,431, be sustained and that the Trademark Trial and Appeal Board grant any and all further relief to Opposer that the Board finds to be necessary and just in the circumstances.

Respectfully submitted,

**EPSTEIN DRANGEL
BAZERMAN & JAMES, LLP**
Attorneys for Opposer

Dated: August 1, 2008

BY:

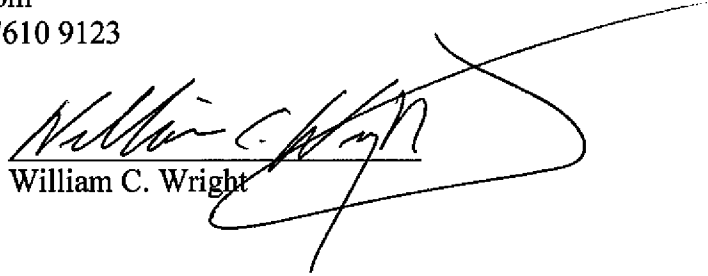

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Notice of Opposition was served by Federal Express, with sufficient postage prepaid, on this 1st day of August, 2008, upon the *pro se* Applicant:

Michael D'Souza
MUFTI LTD.
789 Fulham Road
London , SW65HD
United Kingdom
Tel. No. 020 7610 9123

BY:


William C. Wright